IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1933 of 2004

AHMED KHAN
V/S
RAMESH CHAND

Mr. TRIBHUVAN GUPTA, for the appellant / petitioner

Mr. JP CHHANGANI, for the respondent

Date of Order : 14.3.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties, and perused the record, and have also seen the original summon available on record, so also the two certified copies, one having been applied on 25.7.97 and received on 7.8.97, and the other applied on 11.8.99 and received on 20.8.99, and have also read the statements of appellant, respondents, and the process-server.

On perusal of the three summons, there is no manner of doubt that there has been an interpolation in the signature part of the summons purportedly appended, and denoting service of summon. A photostat certified copy applied on 25.7.97 and obtained on 7.8.97 is devoid of any interpolations, while the original, and the copy applied on 11.8.99 and obtained on 20.8.99 is the phototstat certified copy of the interpolated summons. Thus, it is clear that interpolation was effected somewhere during this period of August 1997 to August 1999, before that date, the statements of the present appellant had been recorded on 14.12.1994, and therein except denying the signatures on the summons nothing was said, while the statements of plaintiff-respondent have been recorded in the year 2002, during this interregnum period, all these things happened.

Significantly, the appellant in his statement had admitted that the process-server knows him for last 2-3 years, and is living in the same locality in which he is living. In this background, the learned Lower Appellate Court has appreciated the conduct of the

appellant in denying the admitted signatures available on record, including those on the application for setting aside the exparte decree, Vakalatnama, and even on the affidavit filed in the execution proceedings. With this, it has been considered that the appellant is projecting wrong story about his address.

Learned trial Court has considered that in the application under Order 9 Rule 13, the appellant has not disclosed his address, while in the summon, the address of the appellant has been mentioned to be Ahmed Khan S/o Idu Khan Pathan R/o Kumarwara, Aburoad. The notice sent to him before filing of the suit, was delivered to him by post on this very address, which is there on the record of suit as Ex.A/1. As against this, in these proceedings, the appellant has tried to explain, rather give out, that his address is Gosi Mohalla, near Kabirdasji Ka Mandir, Aburoad. The suit document is an agreement to sell the property in which the defendant is residing, and in the memo of appeal, it is sought to be contended that by the impugned decree, the appellant is sought to be deprived of the residential house. Likewise, some confusion is sought to be created by raising the contention about non-specification of Kumar Mohalla, or Kumarwara. All this shows that the appellant is living at the same place, as given in the summons, and in view of the admission made by the appellant to be knowing the process-server for last 2-3 years, coupled with the evidence of process-server, it cannot be said that the summon was not served on the appellant, and the signatures are forged, fabricated, or manipulated. That being the position, I do not find any sufficient ground to interfere with the impugned order.

The appeal is, therefore, dismissed summarily.

(N P GUPTA),J.

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